HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1329 of 2001 (SS)
(Old No. 40137/1993)

1. Chandra Vardhan Paridiyal s/o Sri Vidhya Dutt Paridiyal, Instructor I.T.I. Jaiharikhal.
2. Vijay Kant Dixit son of sri jai Prakash Dixit, Instructor I.T.I. Jaiharikhal
3. Sanjeev Kapoor son of sri Vidhya Bhusan Kapoor, Instructor, I.T.I. Jaiharikhal
4. Rakesh Mohan Tewari son of Sri Virendra Dutt Tewari, Instructor, I.T.I. Dugadda.
5. Ramesh Chandra Sharma son of sri Chabra har Sharma, Instructor, I.T.I. Dugadda.
6. Pramod Chandra Naithani son of sri Ganesh Prasad Naithani, Instructor, I.T.I. Dugadda.
7. Umesh Chandra son of sri Bharose Chandra, Instructor, I.T.I. Pokhra
8. Jaipal Singh Negi son of sri Diwan Singh Negi, Instructor I.T.I. Pokhara ..... Petitioners

Versus

1. Director Training and Employment, Lucknow
2. Principal I.T.I. Dugadda & Jaiharikhal
3. Principal I.T.I. Pokhara. ..... Respondents

Sri Raman Kumar Sah, Advocate for the petitioners
Standing Counsel for the respondents.

Dated: 28.8.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 4.10.1993 dismissing the services of the petitioners. Following prayer was made by the petitioners:

i) Issue a writ order or direction in the nature of certiorari quashing order dated 4.10.1993 contained in Annexure-4 and 8 to this writ petition.

ii) Issue a writ order or direction in the nature of mandamus directing the respondents to permit the petitioners to wrote on the post of instructor till the candidate duly selected by the commission joins on the post.

iii) Issue a writ order or direction which this Hon'ble court may deem fit and proper in the circumstances of the case.

iv) Award the cost of writ petition to the petitioners.

Briefly stated accordingly to the petitioners they have passed training from various Industrial Training Institute and are legally eligible and qualified to be appointed on the post of Instructors. Petitioner no. 1 was appointed Instructor in I.T.I. Jaihari Khal on 20.9.89, petitioners no. 2 and 3 were appointed on the post of Instructors in I.T.I. Jaiharikhal on 25.58.92 and 7.8.92 respectively. The petitioners no. 4, 5 and 6 were appointed on the post of instructor by the order of the Principal of the Institution. The posts of Instructors are still being vacant in Industrial Training Institute, Jaiharikhal and no regular appointment has been made as yet nor any post of Instructor have been advertised by the Commission but the Institution arbitrarily terminated the services of petitioners no. 1 to 3 on 8.10.93.

The petitioners no. 7 and 8 were appointed on the post of Instructor Industrial Training Institute, Pokhara by the

Principal on 1.1.93 and 22.12.92 for a period of three months but they continued to serve in the institution till 28.9.93.

According to the petitioners the posts of Instructors in I.T.I. are still lying vacant and no regular appointment has been made as yet nor the Public Service commission have advertised the vacancies of instructors, therefore, they are entitled to continue on their posts in the I.T.I.

On 5.11.1993, the following order was passed by Allahabad High Court:

"The petitioner shall be listed for admission and final disposal in the week commencing 13th December 1993.

In the meantime the petitioners Chandra Vardhan Pardiyal, Vijai Kant Dixit, Sanjeev Kapoor, Rakesh Mohan Tewari, Ramesh Chandra Sharma, Pramod Chandra Naithani, Umesh Chandra and Jai Pal Singh Negi shall continue to work as before provided that no one has been selected by the Commission for those posts."

Counter affidavit has been filed on behalf of the respondents. In paragraph 11 of the counter affidavit, it has been mentioned as under:

"That the contents of para are not admitted. The said posts are to be filled up by the duly selected candidates to be selected by the Public Service Commission. The petitioners were engaged for a specific period in a temporary local arrangement till the duly selected candidates do not join in the institution. Further more at per Govt. policy in respect of dailywagers their engagement was discontinued strictly in accordance with the Govt. orders. However, the petitioners are at liberty to appear in the competitive Exam for the said post to be conducted by the U.P. Public Service Commission. If they

compete in the Exam and are selected by the said commission they can also join and not otherwise."

Sri Raman Kumar Sah, Advocate has pointed out that another writ petition No. 82 of 2004 Naval Kumar Jakhmola and 29 others has been filed with the following prayer. In that writ petition Sanjeev Kapoor, Vikai Kant Dixit and Pramod Naithani are also petitioners.

i) *issue a writ order or direction in the nature of Mandamus commanding to the respondents to consider the matter of the petitioners for regularization of the petitioners service with all consequential benefits.*

ii) *Issue a writ order or direction in the nature of mandamus commanding to the respondents to give the minimum of the pay scale with all allowances to the petitioners from the date of their appointment as daily wagers.*

iii) *Issue any suitable writ, order or direction in the nature of which this Hon'ble High Court may deem fit and proper in the circumstances of the case.*

iv) *Award the cost of the writ petition to the petitioner.*

The petitioners are not entitled for the writ of mandamus in view of the observations made by the Apex Court in Apex Court in the case State of Karnataka vs. Uma Devi, (2006) 4 SCC 1 to the following effects:

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for

some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a positing to bargainnot at arms lengthsince he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. But doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all , innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the

nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

The counsel for the petitioners has referred the order passed by this Court on 25.10.2005 in writ petition No. 82 of 2004 (SS) to the following effect:

In view of this statement and considering that the Allahabad High Court in the aforesaid judgment has already settled the controversy raised in the present writ petition, the present writ petition is also disposed of on the same terms, conditions and observations made by the Allahabad High Court in writ petition No. 5683 (SS) 1995, U.P. Rajiya Aydyogik Prashikshan Sanshthan Dainik Vetan Karmchari Kalyan Samiti, Lucknow and another vs. State of U.P. & others delivered on 16.2.2004."

In writ petition No. 82 of 2004 (SS), the present petitioner no. 2 Vijay Kant, petitioner no.3 Sanjeev Kapoor and petitioner no. 6 Pramod Naithani were also the petitioners but they

suppressed this fact in the writ petition regarding the pendency of the earlier writ petition No. 1329 of 2001.

Further the petitioners cannot claim regularisation in view of the observations made by the Apex Court in the case Secretary, State of Karnataka vs. Uma Devi Govt. (2006) 4 SCC 1 also.

Consequently, writ petition is dismissed. No order as to costs.

Dated: 28.8.2006 **Rajesh Tandon, J.**

*Dhyani